

Complaint

42 F. T. C.

IN THE MATTER OF

UNION FISHERMEN'S CO-OPERATIVE PACKING
COMPANY

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SUBSEC. (c) OF SEC. 2 OF AN ACT OF CONGRESS APPROVED OCT. 15, 1914,
AS AMENDED BY AN ACT APPROVED JUNE 19, 1936

Docket 5420. Complaint, Feb. 13, 1946—Decision, June 14, 1946

Where a corporation engaged in the packing and interstate sale and distribution of canned Columbia River salmon, tuna fish, and other sea-food products, selling such products (1) through legitimate intermediaries who acted as its agents and to whom it paid commissions and brokerage fees, and (2) to "direct buyers" who transmitted their purchase orders directly to it, and who although designating themselves as "brokers" were not such, but operated contrary to the manner in which a broker operates, purchasing and selling in their own names and for their own accounts, warehousing and insuring the products etc., and taking title and assuming all risks incident to ownership—

Paid or granted to such direct buyers, directly or indirectly, commissions, brokerage or other compensation or allowances or discounts in lieu thereof on their own purchases made in their own names and for their own accounts for resale:

Held, That such paying and granting by it of commissions, etc., to direct buyers of its sea-food products, was in violation of subsection (c) of section 2 of the Clayton Act as amended.

Mr. Edward S. Ragsdale for the Commission.

Norblad & Norblad, of Astoria, Oreg., for respondent.

COMPLAINT

The Federal Trade Commission, having reason to believe the party respondent named in the caption hereof and hereinafter more particularly designated and described, since June 19, 1936, has violated and is now violating the provisions of subsection (c) of section 2 of the Clayton Act (U. S. C. title 15, sec. 13) as amended by the Robinson-Patman Act, approved June 19, 1936, hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Union Fishermen's Co-Operative Packing Co., is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Astoria, Oreg.

PAR. 2. The respondent, since June 19, 1936, has been, and is now, engaged in the business of packing, selling, and distributing canned Columbia River salmon, canned Columbia River tuna fish, and other

sea-food products (all of which are hereinafter designated as sea-food products) for its own account for resale.

PAR. 3. The respondent sells and distributes its sea-food products by two separate and distinct methods. The first and principal method is by utilizing intermediaries or brokers who act as respondent's agents in negotiating the sale of its sea-food products at respondent's prices and on respondent's terms and for which services to respondent such intermediaries or brokers are paid commissions or brokerage fees. This method of distributing respondent's commodities is not challenged by this complaint.

The second method, which is challenged by this complaint, is by the sale by respondent of its sea-food products direct to buyers, who are paid by respondent, directly or indirectly, commissions or brokerage fees on such purchases. All such buyers referred to herein are "direct buyers." In transactions between respondent and such buyers the respondent does not use intermediaries or brokers.

Such direct buyers transmit their own purchase orders for such sea-food products directly to the respondent. The respondent thereafter invoices and ships such commodities to such buyers from whom respondent collects the purchase price of the merchandise.

Some such buyers, upon receipt of such sea-food products from respondent, warehouse such commodities in their own warehouses or in public warehouses, and insure the commodities at their own expense and in their own names and for their own account against contingent loss or damage. Some such direct buyers designate themselves as brokers but are not brokers in fact. Contrary to the manner in which a broker operates, such buyers purchase and resell for their own account taking title to and assuming all risk incident to ownership.

PAR. 4. The respondent, since June 19, 1936, in the course and conduct of its said business, has sold and distributed a substantial portion of its sea-food products through intermediaries or brokers to buyers and also directly to buyers located in States other than the State in which respondent is located and as a result of said sales and the respondent's instructions such commodities have been shipped and are now shipped and transported across State lines to such buyers so located.

PAR. 5. The respondent, since June 19, 1936, in connection with the interstate sale of its sea-food products has been, and is now, paying or granting, or has paid or granted, directly or indirectly, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof to buyers on their own purchases of respondent's sea-food products. Such buyers have purchased respondent's sea-food prod-

ucts in their own name and for their own respective accounts for resale.

PAR. 6. The acts and practices of the respondent, Union Fishermen's Co-Operative Packing Co., a corporation, in promoting the sale of its sea-food products by paying to buyers, directly or indirectly, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof as set forth above are in violation of subsection (c) of section 2 of the Clayton Act as amended.

REPORT, FINDINGS AS TO THE FACTS, AND ORDER

Pursuant to the provisions of an act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act), and by virtue of the authority vested in the Federal Trade Commission by the aforesaid act, the Federal Trade Commission on February 13, 1946, issued and subsequently served its complaint in this proceeding upon the respondent, Union Fishermen's Co-Operative Packing Co., a corporation, charging it with a violation of subsection (c) of section 2 of the Clayton Act as amended by the Robinson-Patman Act. After the issuance of said complaint, the respondent filed an answer thereto admitting all the material allegations of fact set forth in said complaint and waiving intervening procedure and further hearing as to said facts. Thereafter, this proceeding regularly came on for final hearing before the Commission upon said complaint and answer thereto, and the Commission, having duly considered the matter and being now fully advised in the premises, finds that this proceeding is in the interest of the public and makes this its findings as to the facts and its conclusion drawn therefrom:

FINDINGS AS TO THE FACTS

PARAGRAPH 1. Respondent Union Fishermen's Co-Operative Packing Co. is a corporation organized and existing under the laws of the State of Oregon, with its principal office and place of business located at Astoria, Oreg.

PAR. 2. The respondent, since June 19, 1936, has been, and is now, engaged in the business of packing, selling, and distributing canned Columbia River salmon, canned Columbia River tuna fish, and other sea-food products (all of which are hereinafter designated as sea-food products) for its own account for resale.

Respondent causes said food products when sold by it to be transported from its aforesaid place of business in the State of Oregon to

purchasers thereof located in various other States of the United States. Respondent maintains and at all times mentioned herein has maintained a course of trade in said food products in commerce among and between the various States of the United States.

PAR. 3. Respondent sells said sea-food products through legitimate intermediaries who act as his agents and to whom commissions and brokerage fees are paid for the services so rendered. In addition, respondent has sold its sea-food products direct to buyers who were paid by respondent, directly or indirectly, commissions or brokerage fees on such purchases. All such buyers referred to herein are "direct buyers." In transactions between respondent and such buyers the respondent did not use intermediaries or brokers.

Such direct buyers transmitted their own purchase orders for such sea-food products directly to the respondent. The respondent thereafter invoiced and shipped such commodities to such buyers from whom respondent collected the purchase price of the merchandise.

Some of such buyers upon receipt of such sea-food products from respondent warehoused such commodities in their own warehouses or in public warehouses and insured the commodities at their own expense and in their own names and for their own accounts against contingent loss or damage. Some of such direct buyers designated themselves as brokers but were not brokers in fact. Contrary to the manner in which such a broker operates, such buyers purchased and sold for their own accounts taking title to and assuming all risks incident to ownership.

PAR. 4. The respondent, since June 19, 1936, in connection with the sale of its sea-food products in interstate commerce, has sold its sea-food products to direct buyers who purchased respondent's sea-food products in their own names and for their own accounts for resale. During the time mentioned herein respondent has paid or granted to such direct buyers, directly or indirectly, commissions, brokerage, or other compensation or allowances or discounts in lieu thereof, on their own purchases made in their own names and for their own accounts for resale.

CONCLUSION

The paying and granting by the respondent, directly or indirectly, of commissions, brokerage, or other compensation and allowances, or discounts in lieu thereof, to buyers of its sea-food products who purchased such sea-food products in their own names and for their own accounts for resale, as hereinabove found, are in violation of subsection (c) of section 2 of the Clayton Act, as amended.

Order

42 F. T. C.

ORDER TO CEASE AND DESIST

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and answer of the respondent, which answer admits all the material allegations of fact set forth in said complaint and waives all intervening procedure and further hearing as to said facts, and the Commission having made its findings as to the facts and its conclusion that said respondent has violated the provisions of subsection (c) of section 2 of the act of Congress entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (the Clayton Act), as amended by an act of Congress approved June 19, 1936 (the Robinson-Patman Act):

It is ordered, That the respondent Union Fishermen's Co-Operative Packing Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the sale and distribution of canned Columbia River salmon, canned Columbia River tuna fish, and other sea-food products in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Paying or granting, directly or indirectly, to any buyer, anything of value as a commission or brokerage, or any compensation, allowance or discount in lieu thereof, upon purchases made for such buyer's own account.

It is further ordered, That the respondent shall, within 60 days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this order.

Syllabus

IN THE MATTER OF

PHILIP SHLANSKY & BRO., INC., ET AL.

COMPLAINT, FINDINGS, AND ORDER IN REGARD TO THE ALLEGED VIOLATION
OF SEC. 5 OF AN ACT OF CONGRESS APPROVED SEPT. 26, 1914

Docket 5274. Complaint, Feb. 9, 1945—Decision, June 17, 1946

When garments closely simulating or resembling the peltries of animals bear labels which, because of the names and illustrations thereon, suggest such animals or the country of their origin, and which are either unaccompanied by words disclosing that such garments are in fact made of fabric rather than peltries, or bear descriptive phrases in such small type and in such manner that the purchasing public may not be readily apprised of the true nature of the material, such practice has the tendency and capacity to confuse, mislead, and deceive the purchasing public into the belief that such garments are made from the peltries or from the wool of such animals; and all the more when accompanied by pictorial representations of models wearing fur coats, and advertising phraseology which implies to a reader not familiar with peltries that said garments may be genuine fur garments.

There is a marked preference on the part of a substantial portion of the purchasing public for coats and other garments made from the peltries of fur-bearing animals, such as Persian lambs, seals, and camels, and from the wool of such animals, over garments made from fabrics composed of ordinary wool or composed of a mixture of ordinary wool and other materials.

Where a corporation and six partners who took over and continued the business thereof, engaged in the manufacture and in the interstate sale and distribution of ladies' coats made from certain fabrics which, composed of ordinary wool and cotton or ordinary wool and rayon or cotton and rayon, were designed to resemble or simulate the fur of various animals—

- (a) Made use, on tags and labels furnished by the fabric manufacturers and in advertising circulars and newspaper mats, of trade names which had the sound and appearance of various names which were associated in the minds of the purchasing public with southeastern European, southwestern Asiatic, and far-northern countries where the better known fur-bearing animals are found, including the names Alaskan Kurl, Arctic Kurl, Sitka Kurl, Ombre-Karabaa, Nu Persian, Crown Persian, Persia Laine, Persiana, Ural, Kara Kurl, Krim Kurl, Camalaine and Lammys;
- (b) Falsely represented through use of such trade names and depictions on many of such labels of a lamb, lama, and arctic scenes, and, in said advertising, of models wearing fur coats, along with such descriptive phrases as "fur fabric," that their fabrics and garments made therefrom were made from the peltries of Persian lambs, caraculs, and other fur-bearing animals or from the wool of such animals; and
- (c) Failed to reveal, in connection with the sale and distribution of its said garments made from fabrics containing a substantial percentage of rayon, such content of rayon, which, when manufactured into a fabric simulating the peltry or fur of the Persian lamb, caracul, or seal and other wool or fur-bearing animals, is accepted by the purchasing public as peltries or wool